

JAN 23 2015

A BILL FOR AN ACT

RELATING TO SEX TRAFFICKING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 28-101, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The attorney general shall establish a statewide witness program through which the attorney general may fund or provide for the security and protection of a government witness or a potential government witness in an official proceeding or investigation where the attorney general determines that an offense such as those described in section 710-1071 (intimidating a witness), 710-1072 (tampering with a witness), or 710-1072.2 (retaliating against a witness) is likely to be committed or which involves great public interest. The attorney general may also fund or provide for the security and protection of the immediate family of, or a person otherwise closely associated with, such witness or potential witness if the family or person may also be endangered. In determining whether the funds or security and protection are to be provided, the attorney general shall give greatest priority to official



1 proceedings or investigations involving pending or potential
2 organized crime, racketeering activity, [~~promoting~~
3 ~~prostitution,~~] sex trafficking, or career criminal
4 prosecutions."

5 SECTION 2. Section 351-32, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§351-32 Violent crimes.** The crimes to which part III of
8 this chapter applies are the following and no other:

- 9 (1) Murder in the first degree (section 707-701);
- 10 (2) Murder in the second degree (section 707-701.5);
- 11 (3) Manslaughter (section 707-702);
- 12 (4) Negligent homicide in the first degree (section
13 707-702.5);
- 14 (5) Negligent homicide in the second degree (section
15 707-703);
- 16 (6) Negligent injury in the first degree (section
17 707-705);
- 18 (7) Negligent injury in the second degree (section
19 707-706);
- 20 (8) Assault in the first degree (section 707-710);
- 21 (9) Assault in the second degree (section 707-711);



- (10) Assault in the third degree (section 707-712);
- (11) Kidnapping (section 707-720);
- (12) Sexual assault in the first degree (section 707-730);
- (13) Sexual assault in the second degree (section 707-731);
- (14) Sexual assault in the third degree (section 707-732);
- (15) Sexual assault in the fourth degree (section 707-733);
- (16) Abuse of family [and] household member (section 709-906); [and]
- (17) Terrorism, as defined in title 18 United States Code section 2331[-];
- (18) Labor trafficking in the first degree (section 707-781);
- (19) Labor trafficking in the second degree (section 707-782);
- (20) Sex trafficking in the first degree (section 712-1202); and
- (21) Sex trafficking in the second degree (section 712-1203)."

SECTION 3. Section 663J-2, Hawaii Revised Statutes, is amended by amending the definition of "promoting prostitution" to read as follows:



1 "~~["Promoting prostitution"]~~ "Sex trafficking" means
2 [~~promoting prostitution~~] sex trafficking in the first or second
3 degree, as provided in sections 712-1202 and 712-1203,
4 respectively."

5 SECTION 4. Section 663J-6, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) In the discretion of the court, two or more persons
8 may join in one action under this chapter as plaintiffs if their
9 respective actions involve an individual who engages in
10 [~~promoting prostitution~~] sex trafficking by coercion."

11 SECTION 5. Section 663J-7, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) A claim under this chapter may not be brought against
14 a person more than six years after an act of [~~promoting~~
15 ~~prostitution~~] sex trafficking by coercion by that person."

16 SECTION 6. Section 663J-8, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "[~~f~~]~~§663J-8~~[~~f~~] Stay of action. On motion by a
19 governmental agency involved in an investigation or prosecution
20 for [~~promoting prostitution~~,] sex trafficking, an action brought
21 under this chapter shall be stayed until the completion of the



1 criminal investigation or prosecution that gave rise to the
2 motion for a stay of the action."

3 SECTION 7. Section 701-108, Hawaii Revised Statutes, is
4 amended by amending subsection (1) to read as follows:

5 "(1) A prosecution for murder, murder in the first and
6 second degrees, attempted murder, and attempted murder in the
7 first and second degrees, criminal conspiracy to commit murder
8 in any degree, criminal solicitation to commit murder in any
9 degree, sexual assault in the first and second degrees, [and]
10 continuous sexual assault of a minor under the age of fourteen
11 years, and sex trafficking in the first and second degrees may
12 be commenced at any time."

13 SECTION 8. Chapter 712, Hawaii Revised Statutes, is
14 amended by amending the title of part I to read as follows:

15 "PART I. PROSTITUTION AND [~~PROMOTING PROSTITUTION~~] SEX
16 TRAFFICKING"

17 SECTION 9. Section 712-1201, Hawaii Revised Statutes, is
18 amended by amending the title to read as follows:

19 "§712-1201 [~~Promoting prostitution;~~] Sex trafficking;
20 definition of terms."



SECTION 10. Section 712-1202, Hawaii Revised Statutes, is amended to read as follows:

"§712-1202 [~~Promoting prostitution~~] Sex trafficking in the first degree. (1) A person commits the offense of [~~promoting prostitution~~] sex trafficking in the first degree if the person knowingly:

(a) Advances prostitution by compelling or inducing a person by force, threat, fraud, or intimidation to engage in prostitution, or profits from such conduct by another; or

(b) Advances or profits from prostitution of a person less than eighteen years old.

(2) [~~Promoting prostitution~~] Sex trafficking in the first degree is a class A felony.

(3) A person convicted of committing the offense of sex trafficking in the first degree shall be assessed a fine not to exceed \$50,000.

[~~(3)~~] (4) As used in this section:

"Fraud" means making material false statements, misstatements, or omissions.



1 "Threat" means any of the actions listed in section
2 707-764(1)."

3 SECTION 11. Section 712-1203, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "~~§712-1203 [Promoting prostitution]~~ Sex trafficking in the
6 second degree. (1) A person commits the offense of [~~promoting~~
7 ~~prostitution]~~ sex trafficking in the second degree if the person
8 knowingly [~~advances~~]:

9 (a) Advances or profits from prostitution[-]; or

10 (b) Pays, offers to pay, or agrees to pay a fee to another
11 person for sexual conduct, in reckless disregard of
12 the fact that the other person is a victim of sex
13 trafficking in the first degree.

14 (2) [~~Promoting prostitution]~~ Sex trafficking in the second
15 degree is a class B felony.

16 (3) A person convicted of committing the offense of sex
17 trafficking in the second degree shall be assessed a fine not to
18 exceed \$25,000."

19 SECTION 12. Section 712-1209.1, Hawaii Revised Statutes,
20 is amended by amending subsection (2) to read as follows:



"(2) Solicitation of a minor for prostitution is a class
[E] B felony."

SECTION 13. Section 712-1209.6, Hawaii Revised Statutes,
is amended as follows:

1. By amending subsection (1) to read:

"(1) A person convicted of committing the offense of
prostitution under section 712-1200, loitering for the purpose
of engaging in or advancing prostitution under section 712-1206,
street solicitation of prostitution in designated areas under
section 712-1207, or convicted of a lesser offense when
originally charged with a violation of section 712-1200,
712-1206, or 712-1207, may file a motion to vacate the
conviction if the defendant's participation in the offense was
the result of the person having been a victim of:

(a) [~~Promoting prostitution~~] Sex trafficking in the first
degree under section 712-1202; or

(b) A severe form of trafficking as defined in title 22
United States Code section 7102(13)."

2. By amending subsection (6) to read:

"(6) This section shall not apply to a motion to vacate a
conviction under this chapter for:



(a) ~~[Promoting prostitution]~~ Sex trafficking under section 712-1202 or 712-1203; or

(b) A person who pays, agrees to pay or offers a fee to another person to engage in sexual conduct."

SECTION 14. Section 712A-4, Hawaii Revised Statutes, is amended to read as follows:

"§712A-4 Covered offenses. Offenses for which property is subject to forfeiture under this chapter are:

- (a) All offenses that specifically authorize forfeiture;
- (b) Murder, kidnapping, labor trafficking, gambling, criminal property damage, robbery, bribery, extortion, theft, unauthorized entry into motor vehicle, burglary, money laundering, trademark counterfeiting, insurance fraud, promoting a dangerous, harmful, or detrimental drug, commercial promotion of marijuana, methamphetamine trafficking, manufacturing of a controlled substance with a child present, promoting child abuse, ~~[promoting prostitution,]~~ sex trafficking, solicitation of a minor for prostitution, habitual solicitation of prostitution, or electronic



1 enticement of a child that is chargeable as a felony
2 offense under state law;

3 (c) The manufacture, sale, or distribution of a controlled
4 substance in violation of chapter 329, promoting
5 detrimental drugs or intoxicating compounds, promoting
6 pornography, promoting pornography for minors, or
7 solicitation of prostitution near schools or public
8 parks, which is chargeable as a felony or misdemeanor
9 offense, but not as a petty misdemeanor, under state
10 law; and

11 (d) The attempt, conspiracy, solicitation, coercion, or
12 intimidation of another to commit any offense for
13 which property is subject to forfeiture."

14 SECTION 15. Section 803-44, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "§803-44 Application for court order to intercept wire,
17 oral, or electronic communications. The attorney general of
18 this State, or a designated deputy attorney general in the
19 attorney general's absence or incapacity, or the prosecuting
20 attorney of each county, or a designated deputy prosecuting
21 attorney in the prosecuting attorney's absence or incapacity,



1 may make application to a designated judge or any other circuit
2 court judge or district court judge, if a circuit court judge
3 has not been designated by the chief justice of the Hawaii
4 supreme court, or is otherwise unavailable, in the county where
5 the interception is to take place, for an order authorizing or
6 approving the interception of wire, oral, or electronic
7 communications, and such court may grant in conformity with
8 section 803-46 an order authorizing or approving the
9 interception of wire, oral, or electronic communications by
10 investigative or law enforcement officers having responsibility
11 for the investigation of the offense as to which the application
12 is made, if the interception might provide or has provided
13 evidence of:

- 14 (1) Murder;
- 15 (2) Kidnapping;
- 16 (3) Labor trafficking in the first degree;
- 17 (4) Labor trafficking in the second degree;
- 18 (5) Felony criminal property damage involving the danger
19 of bodily injury as defined in section 707-700;
- 20 (6) Distribution of dangerous, harmful, or detrimental
21 drugs;



(7) Conspiracy to commit one or more of the above; or

(8) Involvement of organized crime and any of the following felony offenses:

(A) Extortion;

(B) Bribery of a juror, witness, or police officer;

(C) Receiving stolen property;

(D) Gambling; [and]

(E) Money laundering[-];

(F) Sex trafficking in the first degree; and

(G) Sex trafficking in the second degree."

SECTION 16. Section 846E-10, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

"(c) Tier 2 offenses. A covered offender who has maintained a clean record for the previous twenty-five years, excluding any time the offender was in custody or civilly committed, and who has substantially complied with the registration requirements of this chapter for the previous twenty-five years, or for the portion of that twenty-five years that this chapter has been applicable, and who is not a repeat covered offender may petition the court, in a civil proceeding, for termination of registration requirements; provided that the



1 covered offender's most serious covered offense is one of the
2 following:

- 3 (1) Any offense set forth in section 707-730(1)(c),
4 707-731(1)(c), 707-732(1)(c), 707-750, 707-751,
5 712-1202[~~(1)(b)~~], or 712-1203[~~(1)(b)~~], ~~as section~~
6 ~~712-1203(1)(b) read prior to its amendment pursuant to~~
7 ~~section 9 of Act 147, Session Laws of Hawaii 2008];~~
8 (2) An offense set forth in section 707-720; provided that
9 the charging document for the offense for which there
10 has been a conviction alleged intent to subject the
11 victim to a sexual offense;
12 (3) An offense set forth in section 707-756 that includes
13 an intent to promote or facilitate the commission of
14 another felony covered offense as defined in section
15 846E-1;
16 (4) An offense that is an attempt, criminal solicitation,
17 or criminal conspiracy to commit any of the offenses
18 in paragraph (1), (2), or (3);
19 (5) Any criminal offense that is comparable to one of the
20 offenses in paragraph (1), (2), (3), or (4); or



1 (6) Any federal, military, out-of-state, tribal, or
2 foreign offense that is comparable to one of the
3 offenses in paragraph (1), (2), (3), or (4).

4 (d) Tier 1 offenses. A covered offender who has
5 maintained a clean record for the previous ten years, excluding
6 any time the offender was in custody or civilly committed, and
7 who has substantially complied with the registration
8 requirements of this chapter for the previous ten years, or for
9 the portion of that ten years that this chapter has been
10 applicable, and who is not a repeat covered offender may
11 petition the court, in a civil proceeding, for termination of
12 registration requirements; provided that the covered offender's
13 most serious covered offense is one of the following:

14 (1) Any offense set forth in section 707-732(1)(d) or (e),
15 707-733(1)(a), 707-752, 707-759, 711-1110.9,
16 ~~[712-1202(1)(a), 712-1203(1),]~~ or 712-1209.1;

17 (2) An offense set forth in section 707-721 or 707-722;
18 provided that the offense involves unlawful
19 imprisonment of a minor by someone other than a
20 parent;



(3) An offense set forth in section 707-757 that includes an intent to promote or facilitate the commission of another covered offense as defined in section 846E-1;

(4) An offense that is an attempt, criminal solicitation, or criminal conspiracy to commit any of the offenses in paragraph (1), (2), or (3);

(5) Any criminal offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4);

(6) Any federal, military, out-of-state, tribal, or foreign offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4); or

(7) Any other covered offense that is not specified in subsection (a) or (c) or paragraph (1), (2), (3), (4), (5), or (6)."

SECTION 17. Section 853-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) This chapter shall not apply when:

(1) The offense charged involves the intentional, knowing, reckless, or negligent killing of another person;

(2) The offense charged is:



- 1 (A) A felony that involves the intentional, knowing,
2 or reckless bodily injury, substantial bodily
3 injury, or serious bodily injury of another
4 person; or
- 5 (B) A misdemeanor or petty misdemeanor that carries a
6 mandatory minimum sentence and that involves the
7 intentional, knowing, or reckless bodily injury,
8 substantial bodily injury, or serious bodily
9 injury of another person;
- 10 (3) The offense charged involves a conspiracy or
11 solicitation to intentionally, knowingly, or
12 recklessly kill another person or to cause serious
13 bodily injury to another person;
- 14 (4) The offense charged is a class A felony;
- 15 (5) The offense charged is nonprobationable;
- 16 (6) The defendant has been convicted of any offense
17 defined as a felony by the Hawaii Penal Code or has
18 been convicted for any conduct that if perpetrated in
19 this State would be punishable as a felony;
- 20 (7) The defendant is found to be a law violator or
21 delinquent child for the commission of any offense



1 defined as a felony by the Hawaii Penal Code or for
2 any conduct that if perpetrated in this State would
3 constitute a felony;

4 (8) The defendant has a prior conviction for a felony
5 committed in any state, federal, or foreign
6 jurisdiction;

7 (9) A firearm was used in the commission of the offense
8 charged;

9 (10) The defendant is charged with the distribution of a
10 dangerous, harmful, or detrimental drug to a minor;

11 (11) The defendant has been charged with a felony offense
12 and has been previously granted deferred acceptance of
13 guilty plea status for a prior offense, regardless of
14 whether the period of deferral has already expired;

15 (12) The defendant has been charged with a misdemeanor
16 offense and has been previously granted deferred
17 acceptance of guilty plea status for a prior felony,
18 misdemeanor, or petty misdemeanor for which the period
19 of deferral has not yet expired;

20 (13) The offense charged is:

21 (A) Escape in the first degree;



- 1 (B) Escape in the second degree;
- 2 (C) Promoting prison contraband in the first degree;
- 3 (D) Promoting prison contraband in the second degree;
- 4 (E) Bail jumping in the first degree;
- 5 (F) Bail jumping in the second degree;
- 6 (G) Bribery;
- 7 (H) Bribery of or by a witness;
- 8 (I) Intimidating a witness;
- 9 (J) Bribery of or by a juror;
- 10 (K) Intimidating a juror;
- 11 (L) Jury tampering;
- 12 ~~[(M)] Promoting prostitution in the second degree;~~
- 13 ~~[(N)]~~ (M) Abuse of family or household member;
- 14 ~~[(O)]~~ (N) Sexual assault in the second degree;
- 15 ~~[(P)]~~ (O) Sexual assault in the third degree;
- 16 ~~[(Q)]~~ (P) A violation of an order issued pursuant to
- 17 chapter 586;
- 18 ~~[(R)]~~ (Q) Promoting child abuse in the second degree;
- 19 ~~[(S)]~~ (R) Promoting child abuse in the third degree;
- 20 ~~[(T)]~~ (S) Electronic enticement of a child in the
- 21 first degree;



~~[-(U)]~~ (T) Electronic enticement of a child in the second degree;

[~~(V)~~] (U) Prostitution pursuant to section
712-1200(1)(b);

[~~(W)~~] (V) Street solicitation of prostitution under
section 712-1207(1) (b);

[~~(X)~~] (W) Solicitation of prostitution near schools or public parks under section 712-1209;

[~~(Y)~~] (X) Habitual solicitation of prostitution under
section 712-1209.5; [~~ex~~]

[~~(Z)~~] (Y) Solicitation of a minor for prostitution
under section 712-1209.1;

(Z) Sex trafficking in the first degree under section
712-1202; or

(AA) Sex trafficking in the second degree under
section 712-1203;

(14) The defendant has been charged with:

(A) Knowingly or intentionally falsifying any report required under chapter 11, part XIII with the intent to circumvent the law or deceive the campaign spending commission; or



1 (B) Violating section 11-352 or 11-353; or

2 (15) The defendant holds a commercial driver's license and
3 has been charged with violating a traffic control law,
4 other than a parking law, in connection with the
5 operation of any type of motor vehicle."

6 SECTION 18. This Act does not affect rights and duties
7 that matured, penalties that were incurred, and proceedings that
8 were begun before its effective date.

9 SECTION 19. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 20. This Act shall take effect upon its approval.

12 INTRODUCED BY:

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S.B. NO. 265

Report Title:

Sex Trafficking

Description:

Replaces the term "promoting prostitution" with the term "sex trafficking". Includes under the offense of sex trafficking in the second degree paying or offering to pay a person for sexual conduct with reckless disregard of the fact that the person may be a victim of sex trafficking. Requires a maximum fine of \$50,000 for sex trafficking in the first degree, and \$25,000 for sex trafficking in the second degree. Includes labor trafficking in the first and second degrees and sex trafficking in the first and second degrees in the list of violent crimes for which victims may be eligible for criminal injury compensation. Removes the statute of limitations for sex trafficking in the first and second degrees. Changes solicitation of a minor for prostitution from a class C to class B felony. Adds sex trafficking in the first and second degrees to the list of crimes for which an order to intercept wire, oral, or electronic communications is permitted. Amends the eligibility requirements for offenders of sex trafficking in the first and second degrees to be able to petition the court for termination of sex offender registration requirements.

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